

House Study Bill 533

SENATE/HOUSE FILE _____
BY (PROPOSED ETHICS AND
CAMPAIGN DISCLOSURE
BOARD BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the jurisdiction of the ethics and campaign
2 disclosure board and including effective date and retroactive
3 applicability provisions and subjecting violators to remedies
4 and penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6 TLSB 5114DP 81

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1 1 Section 1. Section 68B.32, subsection 1, Code 2005, is
1 2 amended to read as follows:
1 3 1. An Iowa ethics and campaign disclosure board is
1 4 established as an independent agency. ~~Effective January 1,~~
1 5 ~~1994, the~~ The board shall administer this chapter and set
1 6 standards for, investigate complaints relating to, and monitor
1 7 the ethics of officials, employees, lobbyists, and candidates
1 8 for office in the executive branch of state government. The
1 9 board shall ~~also~~ administer and set standards for, investigate
1 10 complaints relating to, and monitor the campaign finance
1 11 practices of candidates for public office. The board shall
1 12 administer and establish standards for, investigate complaints
1 13 relating to, and monitor the reporting of gifts, bequests, and
1 14 grants under section 8.7. The board shall consist of six
1 15 members and shall be balanced as to political affiliation as
1 16 provided in section 69.16. The members shall be appointed by
1 17 the governor, subject to confirmation by the senate.

1 18 Sec. 2. Section 68B.32A, subsections 1, 2, 4, 5, and 6,
1 19 Code Supplement 2005, are amended to read as follows:

1 20 1. Adopt rules pursuant to chapter 17A and conduct
1 21 hearings under sections 68B.32B and 68B.32C and chapter 17A,
1 22 as necessary to carry out the purposes of this chapter, ~~and~~
1 23 ~~chapter 68A, and section 8.7.~~

1 24 2. Develop, prescribe, furnish, and distribute any forms
1 25 necessary for the implementation of the procedures contained
1 26 in this chapter, ~~and~~ chapter 68A, ~~and~~ section 8.7 for the
1 27 filing of reports and statements by persons required to file
1 28 the reports and statements under this chapter and chapter 68A.

1 29 The board may establish a process to assign signature codes
1 30 to a person or committee for purposes of facilitating an
1 31 electronic filing procedure. The assignment of signature
1 32 codes shall be kept confidential, notwithstanding section
1 33 22.2.

1 34 4. Receive and file registration and reporting from
1 35 lobbyists of the executive branch of state government, client
2 1 disclosure from clients of lobbyists of the executive branch
2 2 of state government, ~~and~~ personal financial disclosure
2 3 information from officials and employees in the executive
2 4 branch of state government who are required to file personal
2 5 financial disclosure information under this chapter, ~~and~~ gift,
2 6 ~~bequest, and grant disclosure information from an agency~~
2 7 ~~pursuant to section 8.7.~~ The board, upon its own motion, may
2 8 initiate action and conduct a hearing relating to reporting
2 9 requirements under this chapter ~~or~~ section 8.7.

2 10 5. Prepare and publish a manual setting forth examples of
2 11 approved uniform systems of accounts and approved methods of
2 12 disclosure for use by persons required to file statements and
2 13 reports under this chapter, ~~and~~ chapter 68A, ~~and~~ section 8.7.
2 14 The board shall also prepare and publish other educational
2 15 materials, and any other reports or materials deemed
2 16 appropriate by the board. The board shall annually provide

2 17 all officials and state employees with notification of the
2 18 contents of this chapter, ~~and~~ chapter 68A, ~~and~~ section 8.7 by
2 19 distributing copies of educational materials to each agency of
2 20 state government under the board's jurisdiction.

2 21 6. Assure that the statements and reports which have been
2 22 filed in accordance with this chapter, ~~and~~ chapter 68A, ~~and~~
2 23 section 8.7 are available for public inspection and copying
2 24 during the regular office hours of the office in which they
2 25 are filed and not later than by the end of the day during
2 26 which a report or statement was received. Rules adopted
2 27 relating to public inspection and copying of statements and
2 28 reports may include a charge for any copying and mailing of
2 29 the reports and statements, shall provide for the mailing of
2 30 copies upon the request of any person and upon prior receipt
2 31 of payment of the costs by the board, and shall prohibit the
2 32 use of the information copied from reports and statements for
2 33 soliciting contributions or for any commercial purpose by any
2 34 person other than statutory political committees.

2 35 Sec. 3. Section 68B.32A, subsection 8, Code Supplement
3 1 2005, is amended as follows:

3 2 8. Establish and impose penalties, and recommendations for
3 3 punishment of persons who are subject to penalties of or
3 4 punishment by the board or by other bodies, for the failure to
3 5 comply with the requirements of this chapter, ~~or~~ chapter 68A,
3 6 or section 8.7.

3 7 Sec. 4. Section 68B.32A, subsection 11, Code Supplement
3 8 2005, is amended as follows:

3 9 11. Establish a procedure for requesting and issuing board
3 10 advisory opinions to persons subject to the authority of the
3 11 board under this chapter, ~~or~~ chapter 68A, ~~or~~ section 8.7.
3 12 Local officials and local employees may also seek an advisory
3 13 opinion concerning the application of the applicable
3 14 provisions of this chapter. Advice contained in board
3 15 advisory opinions shall, if followed, constitute a defense to
3 16 a complaint alleging a violation of this chapter, chapter 68A,
3 17 section 8.7, or rules of the board that is based on the same
3 18 facts and circumstances.

3 19 Sec. 5. Section 68B.32B, subsections 1, 4, 8, and 9, Code
3 20 2005, are amended to read as follows:

3 21 1. Any person may file a complaint alleging that a
3 22 candidate, committee, person holding a state office in the
3 23 executive branch of state government, employee of the
3 24 executive branch of state government, or other person has
3 25 committed a violation of chapter 68A or rules adopted by the
3 26 board. Any person may file a complaint alleging that a person
3 27 holding a state office in the executive branch of state
3 28 government, an employee of the executive branch of state
3 29 government, or a lobbyist or a client of a lobbyist of the
3 30 executive branch of state government has committed a violation
3 31 of this chapter or rules adopted by the board. Any person may
3 32 file a complaint alleging that an agency has committed a
3 33 violation of section 8.7 or rules adopted by the board. The

3 34 board shall prescribe and provide forms for ~~this purpose~~
3 35 purposes of this subsection. A complaint must include the
4 1 name and address of the complainant, a statement of the facts
4 2 believed to be true that form the basis of the complaint,
4 3 including the sources of information and approximate dates of
4 4 the acts alleged, and a certification by the complainant under
4 5 penalty of perjury that the facts stated to be true are true
4 6 to the best of the complainant's knowledge.

4 7 4. Upon completion of legal review, the chairperson of the
4 8 board shall be advised whether, in the opinion of the legal
4 9 advisor, the complaint states an allegation which is legally
4 10 sufficient. A legally sufficient allegation must allege all
4 11 of the following:

4 12 a. Facts that would establish a violation of a provision
4 13 of this chapter, chapter 68A, section 8.7, or rules adopted by
4 14 the board.

4 15 b. Facts that would establish that the conduct providing
4 16 the basis for the complaint occurred within three years of the
4 17 complaint.

4 18 c. Facts that would establish that the subject of the
4 19 complaint is a party subject to the jurisdiction of the board.

4 20 8. The purpose of an investigation by the board's staff is
4 21 to determine whether there is probable cause to believe that
4 22 there has been a violation of this chapter, chapter 68A,
4 23 section 8.7, or of rules adopted by the board. To facilitate
4 24 the conduct of investigations, the board may issue and seek
4 25 enforcement of subpoenas requiring the attendance and
4 26 testimony of witnesses and subpoenas requiring the production
4 27 of books, papers, records, and other real evidence relating to

4 28 the matter under investigation. Upon the request of the
4 29 board, an appropriate county attorney or the attorney general
4 30 shall assist the staff of the board in its investigation.

4 31 9. If the board determines on the basis of an
4 32 investigation by board staff that there is probable cause to
4 33 believe the existence of facts that would establish a
4 34 violation of this chapter, chapter 68A, section 8.7, or of
4 35 rules adopted by the board, the board may issue a statement of
5 1 charges and notice of a contested case proceeding to the
5 2 complainant and to the person who is the subject of the
5 3 complaint, in the manner provided for the issuance of
5 4 statements of charges under chapter 17A. If the board
5 5 determines on the basis of an investigation by staff that
5 6 there is no probable cause to believe that a violation has
5 7 occurred, the board shall close the investigation, dismiss any
5 8 related complaint, and the subject of the complaint shall be
5 9 notified of the dismissal. If the investigation originated
5 10 from a complaint filed by a person other than the board, the
5 11 person making the complaint shall also be notified of the
5 12 dismissal.

5 13 Sec. 6. Section 68B.32C, subsections 1 and 3, Code 2005,
5 14 are amended to read as follows:

5 15 1. Contested case proceedings initiated as a result of the
5 16 issuance of a statement of charges pursuant to section
5 17 68B.32B, subsection 9, shall be conducted in accordance with
5 18 the requirements of chapter 17A. Clear and convincing
5 19 evidence shall be required to support a finding that a person
5 20 has violated this chapter, section 8.7, or any rules adopted
5 21 by the board pursuant to this chapter. A preponderance of the
5 22 evidence shall be required to support a finding that a person
5 23 has violated chapter 68A or any rules adopted by the board
5 24 pursuant to chapter 68A. The case in support of the statement
5 25 of charges shall be presented at the hearing by one of the
5 26 board's attorneys or staff unless, upon the request of the
5 27 board, the charges are prosecuted by another legal counsel
5 28 designated by the attorney general. A person making a
5 29 complaint under section 68B.32B, subsection 1, is not a party
5 30 to contested case proceedings conducted relating to
5 31 allegations contained in the complaint.

5 32 3. Upon a finding by the board that the party charged has
5 33 violated this chapter, chapter 68A, section 8.7, or rules
5 34 adopted by the board, the board may impose any penalty
5 35 provided for by section 68B.32D. Upon a final decision of the
6 1 board finding that the party charged has not violated this
6 2 chapter or the rules of the board, the complaint shall be
6 3 dismissed and the party charged and the original complainant,
6 4 if any, shall be notified.

6 5 Sec. 7. Section 68B.32D, subsection 1, unnumbered
6 6 paragraph 1, Code 2005, is amended to read as follows:

6 7 The board, after a hearing and upon a finding that a
6 8 violation of this chapter, chapter 68A, section 8.7, or rules
6 9 adopted by the board has occurred, may do one or more of the
6 10 following:

6 11 Sec. 8. Section 68B.32D, subsection 1, paragraphs c, d,
6 12 and h, Code 2005, are amended to read as follows:

6 13 c. Issue an order requiring the violator to file any
6 14 report, statement, or other information as required by this
6 15 chapter, chapter 68A, section 8.7, or rules adopted by the
6 16 board.

6 17 d. Publicly reprimand the violator for violations of this
6 18 chapter, chapter 68A, section 8.7, or rules adopted by the
6 19 board in writing and provide a copy of the reprimand to the
6 20 violator's appointing authority.

6 21 h. Issue an order requiring the violator to pay a civil
6 22 penalty of not more than two thousand dollars for each
6 23 violation of this chapter, chapter 68A, section 8.7, or rules
6 24 adopted by the board.

6 25 Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.
6 26 Sections 2 and 4 of this Act, being deemed of immediate
6 27 importance, take effect upon enactment and are retroactively
6 28 applicable to July 1, 2005, and are applicable on and after
6 29 that date.

6 30 EXPLANATION

6 31 This bill relates to jurisdiction of the ethics and
6 32 campaign disclosure board.

6 33 Code section 8.7 was enacted in 2005 and requires all
6 34 gifts, bequests, and grants received by a department or
6 35 accepted by the governor on behalf of the state to be reported
7 1 to the Iowa ethics and campaign disclosure board and the
7 2 government oversight committees.

7 3 The bill allows the ethics and campaign disclosure board to

7 4 administer and establish standards and forms for, investigate
7 5 and hear complaints relating to, issue advisory opinions
7 6 relating to, and monitor the reporting of gifts, bequests, and
7 7 grants under Code section 8.7.
7 8 The provisions of the bill relating to the adoption of
7 9 rules, the development and distribution of forms, the
7 10 receiving and filing of disclosure information, the use of
7 11 manuals and educational materials, availability of documents
7 12 for public inspection, and the issuance of advisory opinions
7 13 are effective upon enactment and are retroactively applicable
7 14 to July 1, 2005.
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7 16 tm:rj/je/5.1